

TESTIMONY OF DAVID BULLINGTON
VICE PRESIDENT OF TAXES, WAL-MART STORES, INC.
BEFORE THE SENATE COMMERCE COMMITTEE
APRIL 12, 2000

Mr. Chairman, Senator Hollings, members of the Committee, thank you for including a voice from the broader retail community in today's hearing. Sound economic policy in a free enterprise economy requires equal tax treatment of the different channels of retail distribution. The existing state rules, as constrained by Supreme Court decisions issued well before the superhighway of technology was introduced, have created two fields of retail competition. On one playing field, brick-and-mortar retail stores, both small and large, are required to collect sales tax on behalf of states and localities. On the other, the unenforceable rules applicable to remote sales do nothing more than encourage consumers to voluntarily pay the use tax equivalent of a sales tax. As we all know, the use tax is easily ignored. Only across-the-board collection of this existing tax will level the playing field and rationalize our tax policy.

We believe that it is now up to Congress to resolve this issue fairly, so that all channels of retail distribution are treated the same. Brick-and-mortar retailers are now at a competitive "pricing" disadvantage because, unlike many of their Internet and other remote selling counterparts, they must collect sales taxes on most in-store sales. And, unless they take drastic steps to separate their Internet business from their brick-and-mortar business, they must collect sales taxes on their own remote sales as well.

We are greatly concerned about the effect the existing tax structure, if not fixed, will have on our

communities. We share everyone's concern with the tax burden issue, and in no way do we want any additional tax burdens placed on consumers. Without across-the-board sales and use tax collection, revenues will actually decrease, and many states will be forced to raise sales tax rates or introduce tax increases in other areas, such as property taxes, to offset the loss of sales tax revenue. In these circumstances, states will have fewer taxing options and will, as a result, have less control over their tax policy. Sales tax revenues are critical to the funding of public services such as schools, roads, police, and fire protection.

Furthermore, customers who do not have access to the Internet—often lower income individuals, who can least afford the burden of taxes—must pay sales taxes, while Internet shoppers in most cases do not. Access aside, the issue of credit availability is a much larger impediment to lower income individuals.

Wal-Mart and the International Mass Retail Association (IMRA) are among the founding members of the e-Fairness Coalition—a coalition that advocates fairness for businesses and consumers, and that supports a level playing field, including fair and efficient collection of the existing tax already applied to remote sales. The e-Fairness Coalition very firmly believes that Congress must not extend the existing moratorium—which does not expire until October 2001—without resolving this sales tax collection issue.

IMRA is an alliance of retailers and their product and service suppliers that is committed to bringing price-competitive value to the world's consumers. IMRA represents over 200 retail companies, which operate more than 133,000 stores worldwide and have sales of over \$450 billion annually. IMRA represents over 600 supplier companies with sales totaling over \$600 billion per year. Together, IMRA's membership represents over \$1 trillion in sales and employs millions of workers.

Background

The issue of whether remote sellers should be required to collect and remit sales taxes is certainly not new, but the spectacular growth of the Internet and the opportunities for increased sales that most businesses see on the Internet have refocused attention on the issue.

Deciding whether remote sellers should be required to collect taxes rests with the Congress, under the U.S. Constitution's Commerce Clause. The Supreme Court's 1992 decision in *Quill Corporation v. North Dakota* held that the Constitution prevents states from requiring use tax collection by out-of-state sellers without a physical connection to the state, but that Congress has the power to require such out-of-state sellers to collect the taxes. As the Court pointed out, only Congress has the authority to regulate interstate commerce. The best and most thoughtful course of action for Congress would be to give those states that undertake specified simplification steps the authority to require remote sellers to collect. This would resolve any concerns about burdening interstate commerce and would put all retailers, at least in those states that simplify, on a level playing field.

Simplification

We believe that Congress may fairly require Internet and other remote sellers to collect and remit sales or use taxes on all taxable business to consumer sales, and that simplification is the key. Much has been made of the thousands of different taxing jurisdictions across the nation and of the other elements of state sales taxes that add to the current complexity. And at present it is a complex patchwork of

systems that causes even the largest and most efficient retailers great headaches. While technology has made tremendous progress, it is not yet by itself a silver bullet that can entirely eliminate the burden of collecting. Technology coupled with simplification is the answer.

We emphasize that even with simplification, any across-the-board collection requirement must allow for suitable de minimis thresholds below which Mom-and-Pop web sites and other small businesses need only concern themselves with the filing requirements of their home state, as required by current law.

Recently there has been a tremendous amount of discussion about sales and use tax simplification. While there is by no means universal agreement on exactly how simplification should proceed, there is broad agreement on a number of items that we believe should make up the basis of Congressional legislation to provide collection authority for states.

Simplification should include a centralized, one-stop, multi-state registration system for sellers; uniform definitions for goods or services that may be included in the tax base; uniform and simple rules for attributing transactions to particular taxing jurisdictions; uniform rules for the designation and identification of purchasers exempt from sales and use taxes, including a database of all exempt entities and a rule ensuring that reliance on such database shall immunize sellers from liability; uniform procedures for the certification of software that sellers rely on to determine state and local use tax rates and taxability; uniform bad debt rules; uniform tax returns and remittance forms; consistent electronic filing and remittance methods; state administration of all state and local sales taxes; uniform audit

procedures; reasonable compensation for tax collection that reflects the complexity of an individual state's tax structure, including the structure of its local taxes; an exemption from use tax collection requirements for sellers falling below a specified *de minimis* threshold; appropriate protections for consumer privacy; and any other features that the states deem warranted to promote simplicity, uniformity, neutrality, efficiency, and fairness. We believe that many states are willing to work together to implement these types of simplification.

To encourage simplification, Congress should give states the authority to adopt a single state-wide use tax rate, which would be a blended rate of the various state and local sales tax rates. Current Commerce Clause judicial restrictions limit a state's ability to create a single blended rate applicable only to remote sales.

Some in Congress are already working on legislation to allow states to enter into an interstate compact to implement the simplification described above. This legislation would allow states that join the compact and meet the simplification goals (upon certification by the General Accounting Office) to require businesses selling into their state (remote sales) to collect and remit the proper tax. We commend this effort to the members of the committee. The compact arrangement removes from Congress the decision of whether states impose and collect the tax and returns it to the states, where sales tax administration properly belongs.

Consequences of Extending the Moratorium Without Addressing Sales Taxes

If Congress extends the current Internet tax moratorium without at the same time approving legislation to achieve a level playing field for all retailers, future resolution of the issue will be seriously jeopardized. I don't know anyone who believes it will be any easier to resolve the issue in five or six years. In fact, I can almost guarantee you that it will be nearly impossible, because absent a solution, most brick-and-mortar businesses that also sell on the Internet will have been forced to reorganize their corporate structure in order to remain price competitive. Companies will, as Wal-Mart has already, restructure their Internet business as a separate subsidiary with nexus in only a handful of states and collecting sales tax in only those states. While Wal-Mart has taken this step for reasons in addition to tax collection, I respectfully suggest that this is not the result Congress should be seeking. Congress should not force businesses to alter their corporate structure simply to remain price competitive.

Rather, Congress should take this opportunity to level the playing field for sales tax collection. A level playing field, where all retailers are treated equally with regard to tax collection duties is the only rational policy available. Simply put, government should not be meddling in the marketplace. By perpetuating the status quo—extending the moratorium without fixing the problem—Congress would be giving Internet and other remote retailers a de facto tax subsidy, while at the same time making it much more difficult to resolve the issue in the future. Internet retailers do not need, nor should they be given, a tax preference. All retail businesses should compete on the traditional bases of price, selection and service. Tax preferences are bad tax policy and bad economic policy, and Congress must take this opportunity to encourage and eventually allow the states to bring this unintended tax subsidy to an end.

Conclusion

Senator McCain, you have long been a champion of ending corporate welfare and closing down special interest loopholes. Surely you cannot have intended to give a special tax subsidy to Internet retailers. By all means, keep the Internet free from taxes on access and do not let the Internet be burdened by special levies or regulations targeted solely at the Internet. Just as there is no justification for singling out the Internet for discriminatory treatment, there is no reason to perpetuate a deficient, outdated system that gives Internet retailers preferential treatment. Internet commerce will continue to flourish as more and more brick-and-mortar retailers take advantage of it. It need not be propped up at the expense of others.